

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6463 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

S.B. MEHTA & OTHERS

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioners

MR HL JANI for Respondents nos.1 & 2

MR RJ OZA for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/12/96

ORAL JUDGEMENT

1. Heard the learned counsel for the parties.

2. The petitioners are challenging by this petition, to the action of respondents of denial of the appointments to them on the post of Dy. Executive Engineer of Gujarat State Engineering Service Class II. It is not in dispute that in the year 1980, advertisement was given for 40 posts of Dy. Engineers for making

selection thereon, by Gujarat Public Service Commission, Ahmedabad. The petitioners, in response to the said advertisement had submitted their applications. They were called for written test in which as per their case, they were successful. Thereafter they were called for viva-voce (interview), and thereafter in the year 1982, merit list had been published, but their names were not figured in the merit list. It is not in dispute that in the merit list which had been published in the year 1982, the petitioners were placed in the waiting list, though this fact has not been mentioned by the petitioners in the Special Civil Application. But Mr. R.J.Oza, learned counsel for the Gujarat Public Service Commission has brought this fact to the notice of the Court which the learned counsel for the petitioner has also admitted. Thereafter, a litigation before this Court in respect of those selection was started by the persons other than the petitioners. Those persons had come before this Court with grievances that the indiscriminately weightage is given to numbers which had been awarded to the candidates in viva-voce, and no weightage had been given to the performance of the candidates in the written test. It is also not in dispute between the parties that those petitions had been decided by this Court subject to the direction to the Commission to prepare fresh merit list after giving due weightage to the performance of candidates in the written test as also viva-voce. Accordingly, in the year 1986, a fresh merit list had been prepared and admittedly in this list, the names of the petitioners were not there though their names were in the waiting list at sr. nos. 24,39, 67 & 68. It is contended by the counsel for the petitioners that the names of the petitioners, though they were selected, were erroneously placed in the waiting list instead of select list. It is also the grievance of the petitioners that had the respondent no.3 would have prepared the select list as per the directions of this Court, in the earlier litigation, after giving due weightage to the marks of written test and viva voce test, the placement of the petitioners ought to have been at higher side. The method adopted in preparation of the select list has been stated to be illegal.

3. The petitioners have failed to make out any case whatsoever and the reasons are as follows.

4. The petitioners had made an attempt to get a fishing inquiry by this Court in the matter of selection which has been made by a constitutional authority i.e. the Gujarat Public Service Commission. This Court had given direction to GPSC to prepare a merit list after

giving weightage to the marks of the candidates in written test as also in viva-voce test. Even if it is presumed that the Commission have not acted in accordance with the directions given by this Court, there is no basis whatsoever for the apprehension of the petitioners that they ought to have been placed on the higher side in the merit list. Such a vague statement can be made by the candidates who have not been selected. In the matter of selection held by the Commission i.e. a constitutional body, it has to be accepted and this Court will not sit as appellate authority thereon. The selection may be subject to the judicial review and scrutiny of this Court but not on the ground as it is alleged in the Special Civil Application. It may be only on the ground where the petitioners have come up with malafides of the members of the selection committee or some malpractices in selections, which is not the case here. As stated earlier, the petitioners have made an attempt one way or the other to get the record of the Selection Committee regarding the selection, meaning thereby the Court has to hold a fishing inquiry, which normally is not and should not be done by this Court under article 226 of Constitution of India. The averments made by the petitioners in the Special Civil Application were verified on the basis of knowledge, information and belief. In view of this aforesaid affirmation of the affidavit, it is a case where the averments made in the writ petition may not be on the basis of personal knowledge. Otherwise also, the petitioners cannot have any personal knowledge of the fact that they had been comparatively given lesser marks in the viva voce test. These are the matters which are confidential in nature. The petitioners cannot have any access to the said record. So far as the information is concerned, the petitioners have not disclosed the source thereof on the basis of which the present case has been made out by the petitioners.

5. In the merit list, which has been published in the year 1982 earlier to decision of this Court in the earlier litigation, the names of the petitioners were placed in the waiting list. After decision of this Court, the names of the petitioners were placed in the waiting list. It is not the case of the petitioners that any of the candidates placed lower than them in the waiting list has been given appointment. The appointments should have been made only against 40 posts which is clear from the Civil Application filed by the petitioners being C.A.No. 615/92. The placement of petitioners in the waiting list does not give any right of appointment to the petitioners. It is not obligatory on the part of the

respondents to give appointment to those who are in the waiting list, more so when the appointments were to be made only on 40 posts which were advertised, and no writ of mandamus can be issued by this Court in such case.

6. The matter pertains to the year 1980. All the appointments have been made in the year 1990. Otherwise also, after about 6 years the relief which has been prayed by the petitioners normally should not be granted. Lastly, this writ petition deserves to be dismissed on another ground. The selectees who were appointed have not been made party to this petition. In substance, the petitioners challenged the select list and as stated earlier 40 persons have already been given appointments. This writ petition impugning selection and appointments, without impleading all the selected candidates, is not maintainable. More so, when as stated earlier appointments have already been made in the year 1990. Reference may have to the decision of the Supreme Court in the case of Ishwar Singh vs. Kuldip Singh reported in 1995(suppl.) (1) SCC 179. It is case where none of legal or fundamental rights of the petitioners are being infringed. The writ petition is wholly misconceived. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. The petitioners are directed to pay Rs.5000/- by way of costs of this petition within two months from today, and 50% thereof be deposited in the office of Gujarat State Legal Aid and Advisory Board, High Court, Ahmedabad and remaining amount in the office of Bar Council of Gujarat in account of Advocates' Welfare Funds.

amp/-